

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of:

2006 Quadrennial Regulatory Review –  
Review of the Commission’s Broadcast  
Ownership Rules and Other Rules  
Adopted Pursuant to Section 202 of the  
Telecommunications Act of 1996

2002 Biennial Regulatory Review –  
Review of the Commission’s Broadcast  
Ownership Rules and Other Rules Adopted  
Pursuant to Section 202 of the  
Telecommunications Act of 1996

To: The Secretary

MB Docket No. 06-121

MB Docket No. 02-277

**COMMENTS OF  
CEQUEL COMMUNICATIONS, LLC D/B/A SUDDENLINK COMMUNICATIONS**

Cequel Communications, LLC d/b/a/ Suddenlink Communications (“Suddenlink”) hereby submits these comments in the above-referenced proceeding. Suddenlink serves approximately 1.4 million cable television subscribers in Texas, West Virginia, Louisiana, Arkansas, and a number of other states. As a cable television operator, Suddenlink is affected by the Commission’s broadcast ownership regulations, because those regulations control the leverage that broadcast television stations exercise in retransmission consent negotiations.

Broadcast ownership consolidation within a particular television market results in increased leverage in negotiations with local cable operators. “Combined” broadcasters are far more likely to advance inflationary retransmission consent demands, which result is clearly contrary to the best interests of the American consumer. As the Commission considers in this

proceeding how its broadcast ownership regulations affect the “public interest,” Suddenlink respectfully submits that the economic threat posed by *de jure* and *de facto* television duopolies under the current retransmission consent regime must be addressed.

Based on the retransmission consent difficulties it experienced this past summer, Suddenlink believes that the Commission should strengthen the existing regulation of television duopolies. The Commission not only should preclude any entity from acquiring more than one of the four top-ranked stations in a particular television market, it also should expressly prohibit any entity from exercising retransmission consent authority on behalf of more than one of these top-ranked local stations. The latter prohibition is essential to foreclose entities from using local marketing agreements (“LMAs”) and various other means to consolidate the retransmission consent authority of the top-ranked local stations. Without these restraints, cable operators and their customers are extraordinarily vulnerable to excessive retransmission consent demands.

## **I. FACTUAL BACKGROUND**

Suddenlink experienced a difficult retransmission consent dispute this past summer with the Sinclair Broadcast Group (“Sinclair”). The dispute concerned Sinclair’s financial demands for allowing the continued cable carriage of two Charleston, West Virginia television stations – WCHS (ABC) and WVAH (Fox). A Sinclair subsidiary owns the former station, and Sinclair operates the latter station through what it describes as a “grandfathered time brokerage agreement.” The arrangement effectively allows Sinclair to dictate the retransmission consent terms for two of Charleston’s top four local broadcast stations. Indeed, in its negotiation with Suddenlink, Sinclair consistently advanced retransmission consent demands for WCHS and WVAH on a unified basis.

In early July 2006, Sinclair insisted that the starting point for retransmission consent negotiations with Suddenlink would be an upfront payment of \$200 per subscriber, plus recurring fees at an additional \$1 per month per subscriber.<sup>1</sup> Confronted with that outrageous demand for continued carriage of the two Charleston stations, Suddenlink had no choice but to file an "Emergency Retransmission Consent Complaint" at the Commission.<sup>2</sup>

At the same time, Suddenlink was facing extraordinary pressure to either capitulate immediately to Sinclair's unprecedented financial demands or deprive its cable customers of popular ABC and FOX programming (as well as local programming) offered by Sinclair's two Charleston stations. Sinclair repeatedly threatened legal action against Suddenlink for continuing to carry WCHS and WVAH during the July "sweeps period," notwithstanding Commission regulations requiring continued carriage of these stations until the end of the then-current sweeps period.<sup>3</sup> Sinclair challenged Suddenlink's good faith legal position by filing an Emergency Petition for Declaratory Ruling and for Injunctive Relief with the Commission.<sup>4</sup>

While these proceedings were pending before the Commission, Suddenlink and Sinclair settled the underlying retransmission consent dispute and filed a Joint Motion to Dismiss their respective filings.<sup>5</sup> The Commission subsequently granted the Joint Motion.<sup>6</sup> Although that

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<sup>1</sup> The upfront fee demanded by Sinclair equated to roughly \$40 million. This sum, amortized over the remaining term of the retransmission consent agreement, *plus* the recurring monthly fee demanded by Sinclair, amounted to more than \$7 per subscriber per month. Sinclair was effectively seeking retransmission consent fees for just two broadcast stations equivalent to the aggregate programming costs of more than 75 other programming channels offered on the affected cable systems.

<sup>2</sup> Emergency Retransmission Consent Complaint, CSR-7038-C (filed Jul. 5, 2006).

<sup>3</sup> Sinclair also expressly encouraged Suddenlink customers to switch to DBS competitors.

<sup>4</sup> Emergency Petition for Declaratory Ruling and for Injunctive Relief, CSR-7039-C (filed Jul. 7, 2006).

<sup>5</sup> Joint Motion to Dismiss, Docket Nos. CSR-7038-C, CSR-7039-C (filed Aug. 7, 2006).

<sup>6</sup> *Cebridge Acquisition, LLC d/b/a/ Suddenlink Communications v. Sinclair Broadcast Group, Inc.*, CSR No. DA 06-1624 (rel. Aug. 14, 2006).

settlement resolved the existing Charleston dispute, Suddenlink's encounter with Sinclair illustrates all too clearly the inherent difficulty of a cable operator negotiating with a broadcaster who has retransmission consent authority for two top-ranked stations in a particular television market.<sup>7</sup> To avoid large-scale viewer disruption, Suddenlink was essentially compelled to accept Sinclair's settlement terms.

In the now vigorously competitive MVPD marketplace, it is difficult for a cable operator to withstand costly retransmission consent demands advanced by any one of the top four (*i.e.*, ABC, CBS, NBC, and FOX) network affiliates. A cable operator determined to resist inflationary demands faces an immediate threat of a diminished product and costly subscriber defections. Broadcasters (like Sinclair) are aware of this business conundrum and are increasingly willing to exploit the situation for their own financial advantage with no regard for the consumer. The economic burden associated with increased retransmission consent fees is, of course, ultimately shouldered by the consumer through increased cable rates. This conundrum (and the potential adverse consequences on the viewing public) is necessarily compounded when the retransmission consent demand involves not just one, but two, "Big 4" affiliates.

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<sup>7</sup> Suddenlink suspects that its dispute with Sinclair would not have settled when it did were it not for the threat of Commission action in the then-pending Complaint proceeding. Without a generally applicable rule against top-ranked stations presenting a unified retransmission consent demand, Suddenlink fears that there will be more frequent pleas in the future for Commission intervention on behalf of the rate paying public.

## II. **THE “PUBLIC INTEREST” REQUIRES THE COMMISSION TO CONSIDER RETRANSMISSION CONSENT RAMIFICATIONS IN REVIEWING ITS BROADCAST OWNERSHIP REGULATIONS.**

Suddenlink appreciates that overall reform of retransmission consent lies outside the scope of this proceeding. It is concerned, however, that the *Further Notice*<sup>8</sup> lacks any reference to retransmission consent ramifications, and there do not appear to be any discussions of retransmission consent consequences in the Commission’s earlier broadcast ownership proceedings.

The Commission is obligated in this proceeding to engage in a comprehensive evaluation of the relationship between its broadcast ownership regulations and the “public interest.”<sup>9</sup> This statutory charge necessitates careful consideration of how the Commission’s regulations affect consumer costs.

Although there may be public benefits in allowing certain local broadcast combinations, the Commission already has recognized that these benefits generally do **not** apply to the top-ranked broadcast stations. These “Big 4” affiliates (which are the subject of these Comments) typically do not need the “increased efficiencies that multiple ownership affords” in order to provide local programming.<sup>10</sup> It is precisely for this reason that the Commission so far has sensibly retained its rule prohibiting any entity from owning more than one of the four top-ranked stations in a particular television market.

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<sup>8</sup> 2006 *Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, “Further Notice of Proposed Rule Making,” FCC 06-93 (rel. Jul. 24, 2006) (“*Further Notice*”).

<sup>9</sup> See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 202(h) (1996) (“1996 Act”); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004) (amending Sections 202(c) and 202(h) of the 1996 Act. See also *Further Notice* at ¶ 1.

<sup>10</sup> See *Further Notice* at ¶ 12.

Significantly, it is the same group of top-ranked broadcast stations that typically elect “retransmission consent,” rather than “must carry.” These Big 4 affiliates have ample popularity among the viewing public to extract various forms of retransmission consent consideration from local cable operators. In Suddenlink’s experience, retransmission consent negotiations with these Big 4 affiliates are difficult enough when conducted on a station-by-station basis. Where two or more top-ranked stations negotiate together (as occurred this past summer with the ABC and FOX affiliates operated by Sinclair in Charleston, West Virginia), the consolidated retransmission consent demands increase exponentially.

Combining local retransmission consent efforts (whether through direct ownership, a comprehensive LMA, or *ad hoc* collaboration) necessarily affords broadcast stations additional leverage *vis a vis* a local cable operator. This enhanced leverage threatens to dramatically increase the costs associated with retransmission consent. These costs, of course, are ultimately born by the consumer. It is revealing that of the relatively few retransmission consent complaints filed at the Commission, several involve a broadcaster simultaneously representing two of the local Big 4 affiliates.<sup>11</sup>

The adverse consumer impact posed by top-ranked broadcasters combining for purposes of retransmission consent negotiations stands in marked contrast to the benign cost-saving efficiencies previously relied upon by the Commission as justification for allowing certain broadcast ownership combinations. Accordingly, this proceeding requires careful consideration of retransmission consent ramifications. If the Commission has any concern at all regarding cable rate increases triggered by escalating programming costs, it must evaluate how its own

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<sup>11</sup> See *CoxCom, Inc., Cox Southwest Holdings, L.P., Cox Communications Louisiana, LLC and TCA Cable Partners v. Nexstar Broadcasting, Inc. and Mission Broadcasting, Inc.*, CSR- 6509 (filed Jan. 20, 2005); *Cable America Corporation v. Nexstar Broadcasting I, Inc. and Mission Broadcasting, Inc.*, CSR-6988-N (filed Feb. 1, 2006).

ownership rules affect inflationary retransmission consent demands by both *de facto* and *de jure* “duopoly” broadcasters.

III. **THE “PUBLIC INTEREST” COMPELS THE COMMISSION TO INCLUDE SPECIAL PROVISIONS REGARDING RETRANSMISSION CONSENT IN ITS BROADCAST OWNERSHIP REGULATIONS.**

When retransmission consent was introduced by Congress as part of the Cable Television Consumer Protection and Competition Act of 1992, the Commission’s ownership rules prohibited common ownership of two television stations with overlapping contours. The logical assumption, therefore, was that local broadcasters would negotiate with cable operators on a station-by-station basis. When the Commission relaxed the duopoly rule in 1999, it sensibly retained a ban on any entity owning more than one of the four top-ranked local television stations.<sup>12</sup> That ban (targeted, as a practical matter, at ABC, CBS, NBC, and FOX affiliates) meant that the broadcast stations likely to invoke retransmission consent were likely to negotiate independently.

Based on its recent experience with Sinclair’s *de facto* duopoly in Charleston, West Virginia, Suddenlink is fearful that cable operators may increasingly confront a single broadcast entity engaging in local retransmission consent negotiations on behalf of multiple Big 4 affiliates. This situation is exactly which happened in Suddenlink’s negotiations with Sinclair. It is sure to reoccur in other markets if (as a result of this proceeding) the existing prohibition against broadcasters acquiring more than one of the four top-ranked local television stations were

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<sup>12</sup> See *Review of the Commission’s Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules*, 14 FCC Rcd. 12903 at ¶¶ 58-59 (1999). See also *Prometheus Radio Project v. FCC*, 32 CR 962 (3d Cir., 2004) (Upholding the Commission’s retention of the top-four restriction).

eliminated or if waivers were liberally granted. Suddenlink, therefore, urges the Commission to retain the existing ownership regulation and rigorously scrutinize any waiver petitions.

Even more important from Suddenlink's perspective, the Commission should expressly prohibit any entity from engaging in retransmission consent negotiations on behalf of more than one of the four top-ranked local broadcast stations, regardless of ownership overlap. In cases where the Commission otherwise allows ownership combinations of top-ranked local broadcast stations, it should impose a strict ban on the combined stations electing retransmission consent against local cable operators. This basic licensing condition should be included as pre-requisite for the Commission's transfer approval. A transfer approval granted with this condition would allow the combined entity to secure the benign operating efficiencies ordinarily associated with common ownership, while preventing the combined entity from exploiting its enhanced retransmission consent leverage in a manner contrary to the best interests of the viewing public.

The Commission should also act forcefully to preclude top-ranked broadcasters from evading this basic ownership restriction on retransmission consent collaboration. Suddenlink's recent encounter with Sinclair, for example, shows that a broadcaster operating another Big 4 affiliate through an LMA (rather than through direct ownership) can currently use that business relationship to present local cable operators with a combined retransmission consent demand. With regard to LMAs, a simple solution exists. Just as the Commission now considers an LMA allowing a broadcaster to exercise control over more than 15% of another station's programming as creating an attributable interest in the second station (and, thereby, running afoul of the existing ownership against combining top-ranked local stations),<sup>13</sup> it should also consider an LMA allowing a broadcaster to exercise control over another station's retransmission consent as

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<sup>13</sup> See 47 C.F.R. § 73.3555, note 2(j).

creating an attributable interest in the second station. This simple adjustment to the LMA rules would recognize the public interest in keeping separate the retransmission consent demands of the top-ranked local broadcast stations, just as the current restraint on programming decisions recognizes the public interest in keeping separate the programming decisions of these same top-ranked stations.

Finally, the Commission should adopt a general prohibition against any of the four top-ranked stations in a particular television market combining to present local cable operators with a unified retransmission consent demand. This prohibition is critical to ensuring that broadcasters do not evade retransmission consent restrictions tied directly to ownership interests and formal LMA arrangements by fashioning *ad hoc* consortia for retransmission consent negotiations. The Commission should not countenance any formal or informal combination of retransmission consent demands on behalf of multiple Big 4 affiliates licensed to the same market.

### **CONCLUSION**

Broadcast ownership restrictions have long been a critical component of the Commission's efforts to ensure that broadcast licensees serve the public interest. It is entirely appropriate for the Commission to review those restrictions in this proceeding to determine whether they are fulfilling their stated mission. To date, the Commission has overlooked the critical impact local broadcast consolidation has on retransmission consent negotiations and the

consumer. Suddenlink respectfully submits that the Commission should now act decisively to ensure that the top-ranked local televisions do not combine their retransmission consent demands in a manner contrary to the best interests of the viewing public.

Respectfully submitted,

**Cequel Communications, LLC**  
**d/b/a Suddenlink Communications**

By: 

Steven J. Horvitz  
**COLE, RAYWID & BRAVERMAN, L.L.P.**  
1919 Pennsylvania Avenue, NW  
Suite 200  
Washington, DC 20006  
(202) 659-9750  
Its Attorneys

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